

1 KAREN P. HEWITT
United States Attorney
2 CHRISTOPHER P. TENORIO
Assistant U.S. Attorney
3 California State Bar No. 166022
880 Front Street, Suite 6293
4 San Diego, California 92101-8893
Telephone: (619) 557-7843
5 Christopher.Tenorio@usdoj.gov

6 Attorneys for Plaintiff
United States of America
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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)	Criminal Case No. 07CR3021-WQH
)	
11 Plaintiff,)	DATE: February 4, 2008
)	TIME: 2:00 p.m.
12 v.)	
)	GOVERNMENT'S MOTION FOR
13 PEDRO CRUZ-TERCERO,)	FINGERPRINT EXEMPLARS
)	
14 Defendant.)	TOGETHER WITH MEMORANDUM OF
)	POINTS AND AUTHORITIES
15 _____)	

16 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through
17 its counsel, Karen P. Hewitt, United States Attorney, and Christopher
18 P. Tenorio, Assistant United States Attorney, and hereby files its
19 motion for fingerprint exemplars. Said motion is based upon the files
20 and records of the case, together with the attached Memorandum of
21 Points and Authorities.

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I.

INTRODUCTION

The Government incorporates by reference its Statement of Facts provided in its Response and Opposition to Defendants' Motions, filed under separate cover.

II.

GOVERNMENT'S MOTION FOR FINGERPRINT EXEMPLARS

To establish that Defendant violated 8 U.S.C. § 1326, the Government must prove Defendant was previously deported from the United States and was subsequently found in the United States without having requested and obtained authorization from the Attorney General. To prove that the defendant currently before this Court and in the custody of the Bureau of Prisons is the same individual who was previously deported from the United States, the Government expects to call a certified fingerprint examiner as an expert witness. The expert would testify at trial regarding comparisons between fingerprints obtained from this defendant and those on various immigration and other documents. The Government intends to introduce such testimony during its case-in-chief at trial.

To conclusively establish a match of the aforementioned identities, the Government requests the Court to permit the expert witness to obtain fingerprint exemplars from the Defendant now in custody. The defendant's fingerprints are not testimonial evidence. See Schmerber v. California, 384 U.S. 757 (1966). Thus, using identifying physical characteristics, such as fingerprints, does not violate a defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9th Cir. 1969); Woods v. United States 397 F.2d 156 (9th Cir. 1968).

1 Therefore, the Government respectfully requests that the Court order
2 the defendant to make himself available for fingerprinting by the
3 Government's fingerprint expert or agent.

4 **III.**

5 **CONCLUSION**

6 Based on the foregoing, the Court should grant the Government's
7 motion for fingerprint exemplars.

8 DATED: February 4, 2008

9 Respectfully submitted,

10 KAREN P. HEWITT
11 United States Attorney

12 *s/ Christopher P. Tenorio*
13 CHRISTOPHER P. TENORIO
14 Assistant U.S. Attorney
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal Case No. 07CR3021-WQH
)
Plaintiff,) **CERTIFICATE OF SERVICE**
)
v.)
)
PEDRO CRUZ-TERCERO,)
)
Defendant.)
_____)

IT IS HEREBY CERTIFIED that:

I, CHRISTOPHER P. TENORIO, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **GOVERNMENT'S MOTION FOR FINGERPRINT EXEMPLARS** on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them:

Daniel Casillas, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 4, 2008

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/ Christopher P. Tenorio
CHRISTOPHER P. TENORIO
Assistant U.S. Attorney